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March 12, 2019

Contra Costa County Board of Supervisors
Martinez, CA

VIA E-MAIL: clerkoftheboard@cob.cccounty.us; <http://ca-contracostacounty.civicplus.com/forms.aspx?fid=120> (Supervisor Gioia – no direct e-mail address known); supervisorandersen@bos.cccounty.us; supervisor_burgis@bos.cccounty.us; SupervisorMitchoff@bos.cccounty.us; district5@bos.cccounty.us

cc: Contra Costa County District Attorney's Brown Act Unit: luilkema@contracostada.org

Re: March 12, 2019 Meeting: Agenda Items D.5 and D.6: Appointment to Metropolitan Transportation Commission Needs to Be Postponed Until Public Participation and Accountability Reforms Are Undertaken.

Dear Chair Gioia and members of the Board of Supervisors:

I submitted the Brown Act “cure/correct” demand letter on February 14th that challenged your Board’s Metropolitan Transportation Commission (MTC) appointment as part of your annual Board reorganization at your January 15th meeting. I thank you and your staff for your thoughtful consideration of my allegations. I will reserve comment on the adequacy of the remedies until the cure/correct process is complete and your Board formally informs me of its decisions, but I do wish to express concerns herein about the contents of your Agenda Item Nos. D.5 and D.6 at today’s meeting. I first learned of these agenda items late Monday night and am hastily preparing this letter.

Concerning Agenda Item No. D.5, your staff report fails to mention a troubling aspect of the MTC appointment made on January 15th. Three of the five supervisors (Andersen, Burgis, Mitchoff) were informed on their “preference sheets” last autumn that they could not apply for the MTC post. Above the MTC position and other regional appointments on their preference sheets is this message, “THE FOLLOWING SEATS SHOULD NOT BE REASSIGNED DURING 2019 REORGANIZATION PER BOARD POLICY”. The “New Term Expiration” and “INDICATE PREFERENCES” columns were all filled with gray shading, as if to indicate that these positions were not available to them. In fact, none of these three supervisors indicated a preference for MTC or any of the other positions below the “SEATS SHOULD NOT BE REASSIGNED” message. On what the County purports to be Supervisor Glover’s preference sheet (his name does not appear on its face), MTC is entirely missing from this document.

Supervisor Gioia (who at that time was not yet elected Chair) apparently nominated Supervisor Glover to MTC through a “backdoor deal” expressed in a December 27, 2018 e-mail. Supervisor Gioia wrote, “The terms of several other committees (with the gray shaded area) expire in early 2019. Rather than come back to the board again at a later time, I would like to extend those terms as part of -- this January Board order ... --The Metropolitan Transportation Commission term for Federal Glover expires on 2/1/19 [sic]. That term should also be extended in this Board Order. (Again, I don’t know the length of this term. You’ll have to check that out. I think its 3 or 4 years)”. The documents strongly suggest that competing applications from other supervisors were discouraged (“SEATS SHOULD NOT BE REASSIGNED,” MTC position shaded out) to clear the field so that the incumbent MTC commissioner could be re-appointed through the “backdoor deal” articulated in Supervisor Gioia’s December 27th e-mail.

Your Board should not be rushing to finalize the MTC appointment when the irregularities in your peculiar January 15th appointment decision are not yet fully investigated and understood. Each of you is paid more than \$100,000 annual salary for your positions; the public deserves better than such shenanigans and “shell games” that obscure the appointment process to such an important and controversial regional body that is now arrogating more power for itself.

Under Item No. D.6, **I ask that the Board postpone the Metropolitan Transportation Commission appointment to the 2019-23 term until the County (1) opens up the position to public applications, (2) issues a news release about availability of the position, and (3) carefully evaluates a pool of applicants, including a careful analysis of the incumbent’s twelve-year record at MTC.**

Agenda Item No. D.6 is misleadingly titled, “CONSIDER appointing a member of the Board of Supervisors to the Metropolitan Transportation Commission.” (Emphasis added.) Your Board is not required to appoint a member of your Board to the MTC. MTC’s letter to then Board Chair Karen Mitchoff dated September 25, 2018 said, “MTC Commission members may be elected or appointed officials, or members of the general public.” (See attached Exhibit A.) One of San Francisco’s current MTC commissioners is a member of the general public. The primary qualification to serve as MTC commissioner is “special familiarity with the problems and issues in the field of transportation,” under Government Code § 66504. Hundreds, if not thousands, of county residents likely satisfy this qualification.

This is a **MAJOR false claim** in County Administrator David Twa’s report on Item No. D.6:

CONSEQUENCE OF NEGATIVE ACTION: The County representative seat on the MTC will **remain vacant** until the Board of Supervisors makes an appointment to the open seat. [Emphasis added.]

Mr. Twa is 100 percent wrong. The incumbent MTC commissioner remains in such office until your Board of Supervisors makes an appointment to the seat, by operation of law under Government Code § 1302, which says, “*Every officer whose term has expired shall continue to*

discharge the duties of his office until his successor has qualified.” In fact, MTC has sent letters to appointing authorities informing them of this “holdover commissioner” statute. The incumbent occupied that MTC seat during the 2015-19 four-year term. The incumbent will occupy it for as many weeks or months that it takes for your Board to make needed public accountability reforms to the MTC appointment process. He may continue to act as MTC commissioner until his “successor” has qualified; if your Board make a valid re-appointment of the incumbent, he will qualify to succeed himself. So the County representative seat will NOT be vacant if your Board completes Item D.5 today, but delays action on Item D.6.

Your Board should not rush into making the MTC appointment today. The incumbent should be compelled to answer questions publicly about major problems that have occurred at MTC during his 12-year tenure. The County cannot produce a single written record showing that the incumbent wanted another term at MTC, let alone a written application or completed questionnaire from the incumbent. As my January 15th letter to your Board explained, the multi-billion dollar Bay Bridge boondoggle, the failed \$100 million Wall Street bet, and the quarter-billion dollar MTC headquarters project (moved away from the East Bay) have occurred on the incumbent’s watch. Nearly \$14 million of Contra Costa County existing sales tax revenues are diverted to San Francisco every year because the incumbent fails to question MTC’s AB 1107 funding formula. Instead of plugging this hole, the incumbent and most other county politicians support a new transportation sales tax (e.g., Contra Costa Transportation Authority’s failed Measure X in 2016). The *East Bay Times* derided the recently-retired MTC executive director as a “transportation czar;” the incumbent exercised ineffective oversight over such excesses and failures.

Regional Measure 3: Nearly 56 percent of the county’s electorate voted NO on the bridge toll increase. **Every major portion of the county: West County, Central County, San Ramon Valley and East County all voted NO on MTC/BATA’s RM 3.** Working class communities across the county, including Richmond, San Pablo, Concord, Bay Point, Pittsburg and Antioch all voted NO on RM 3. Every community in the incumbent MTC commissioner’s district voted NO on RM 3. It’s a fair question why the incumbent supported RM 3, yet no one on your Board has asked this important question.

AB 2923: The incumbent voted at the May 23, 2018 MTC meeting to “support” this legislation that usurps local land use authority around BART stations. He voted to “support” AB 2923 despite the fact that the Contra Costa Mayors’ Conference and ten of the county’s nineteen cities had adopted resolutions opposing AB 2923, including his hometown of Pittsburg. It’s a fair question why the incumbent supported AB 2923, yet no one on your Board has asked this important question.

CASA Compact: The CASA Compact is extremely controversial in Contra Costa County. It proposes new taxes and would significantly reduce local land use controls. The incumbent MTC commissioner has not articulated a clear position on the CASA Compact and seems slow to recognize the outcry.

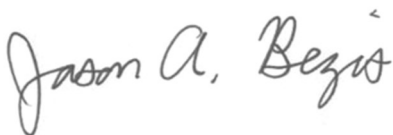
Absenteeism: The incumbent also has a **severe absenteeism problem** at important MTC meetings. The incumbent missed the January 24, 2018 Bay Area Toll Authority vote that placed RM 3 on the ballot. The incumbent also missed the December 19, 2018 MTC meeting at which signing of the CASA Compact was approved. He was the only voting member absent at that important meeting. The Board should direct staff to study the incumbent's MTC attendance record before he is approved for another MTC term. If these were excused absences due to health issues or family emergencies, then the MTC minutes ought to show this. **Why give an important position to someone who does not show up for work, especially at critical times?**

Any finalist for appointment to MTC by your Board should be compelled to complete a written application for the position, answer questionnaires like those created by the Bay Area Transportation Working Group (BATWG) and explain publicly at a Board interview why he or she wants the MTC position. **Why give an important job to someone who does not complete an application and who will not be interviewed?** Any MTC finalist also should articulate a plan for public engagement during the four-year term, such as public appearances around the county to answer citizens' questions about MTC policies, programs and projects. Your Board's MTC commissioner should be required to testify from time-to-time before your Board's Transportation committee, accompanied by MTC staff members, as appropriate. Such meetings would serve to enforce public accountability on your Board's MTC commissioner and on MTC itself.

If your Board cannot ensure such reasonable accountability measures, then your Board is not ready to make an MTC appointment today. If the public is not welcome to participate in the MTC commissioner selection process, then the public should expect that Contra Costa County's MTC commissioners will continue to ignore them and act against their interests for the next four-year term and beyond.

Finally, I wish to state that I am not casting aspersions at County staff. They are, by and large, honorable and dedicated civil servants. Chief Assistant Clerk of the Board Jami Napier and others have been reasonable and helpful, even as I disagree with the initial adequacy of some replies to Public Records Act requests and other inquiries.

Sincerely,



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